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Filing date: **05/16/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049029
Party	Plaintiff Mr. David J. Long, Jr.
Correspondence Address	Mr. David J Long Jr. Taste of South Jersey 2050 Delsea Drive Sewell, NJ 08080 UNITED STATES pr@foodpresswire.com, editor@homeandtowne.com
Submission	Motion to Reopen
Filer's Name	/david j. long jr./
Filer's e-mail	editor@tasteofsouthjersey.com, pr@foodpresswire.com
Signature	/david j. long jr./
Date	05/16/2008
Attachments	OppositionandMotion.pdf (11 pages)(315742 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark registration No. 2969604

For the mark TASTE OF SOUTH JERSEY

David J. Long Jr., Plaintiff/Petitioner

v.

Review Publishing Limited Partnership, Registrant/Defendant

**PLAINTIFF'S OPPOSITION TO DEFENDANTS '
MOTION TO DISMISS BASED ON INSUFFICIENT SERVICE OF PROCESS**

Petitioner, strongly oppose the Motion to Dismiss as filed opposing party or attorney for the opposing party, the registrant/defendant in the matter.

Petitioner asserts that the opposing party or attorney for the opposing party have no grounds to make a motion to dismiss and that the suspension of the above proceeding should have never been initiated by the Board.

Before addressing the merits of this defense, Plaintiff states that this motion is barred and waived, pursuant to Rule 2.117(b): Whenever there is pending before the Board a motion which is potentially dispositive of the case, the potentially dispositive motion may be decided before the question of suspension is considered regardless of the order in which the motions were filed.

Petitioner asserts that the opposing party or attorney for the opposing party are attempting to mislead the Board as it relates to actual occurrences between the parties before and after the plaintiff's Petition to Cancel made on March 18, 2008 in this matter. Moreover the defendants motion to dismiss for insufficient is groundless based upon proof of service attached as Ex. A/B.

Petitioner admits that he acting on his own behalf and that the opposing party or attorney for the opposing party are attempting to suppress the plaintiff's rights pursuant to Rule 2.111(b).

Petitioner respectfully request the Board to recognize plaintiff's motion, opposition and assertion that the suspension proceeding should not have been suspended pursuant to Rule 2.117(b).

ARGUMENT

1. Defendant received notification of the proceeding 92049029 prior to the opposing party or attorney for the opposing party's filing the motion to dismiss or the motion would not have been filed.

Evidenced by papers filed by the opposing party or attorney for the opposing party that registrant and attorneys for the defendant received sufficient service of process and notification of the Petition to Cancel whether or not they chose to recognize plaintiff's first attempt to serve process. Plaintiff did effect proof of service upon the defendants by certified mail. See Exhibit B.

2. Pursuant to Rule 10.143. Petitioner attests under penalties of perjury that he has made every attempt to confer with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement.

3. In *INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc.*, 815 F.2d 391, 403 (6th Cir. 1987), an appeal from the Eastern District of Michigan to the Sixth Circuit, the lower court's ruling was affirmed, providing for sanctions against the defendant for having brought the untimely motion based on insufficiency of service of process. The Sixth Circuit stated that "because even a cursory review of Rule 12 would have revealed that the defense lacked any foundation in law, [defendant] was properly sanctioned for the motion to dismiss for insufficiency of service of process."

Defendant's motion is clearly barred and waived.

Defendant's Conduct Waives the Defense

Defendants had ample opportunity to merely deny the request to accept correspondence by email in the trademark dispute and Plaintiff would have taken steps to effect formal service the first time. Nevertheless, Petitioner did provide service of process on the opposing party or attorney for the opposing party by certified mail a second time as evidenced by Exhibit B. At this late date, the objection to service is inappropriate. Plaintiff relied on this agreement, and should not be prejudiced as a result of Defendants' late change of heart. Indeed, in *Trustees of Cent. Laborers' Welfare Fund v. Lowery*, 942 F.2d 731 (7th Cir. 1991), the court held the defendant had waived the objection by leading plaintiff to believe service was adequate.

Petition states that the opposing party or attorney for the opposing party has misled the petitioner as to their intent to try and resolve the dispute before the petitioner filed his Petition to Cancel on March 18, 2008.

EXHIBIT A

Read Message

Previous

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Move To

Select One

OK

REPLY

REPLY ALL

FORWARD

DELETE

REPORT SPAM

FULL HEADERS

EXPORT

PRINT

From: Gundersen, Glenn <glenn.gundersen@dechert.com>

[add to contacts]

To: FOOD PRESS WIRE <pr@foodpresswire.com>

Cc:

Date: Tuesday, March 18, 2008 05:21 pm

Subject: Read: Re: TASTE OF SOUTH JERSEY Notice attached!

Your message

To: aclifton@reviewpublishing.com

Cc: gmonte@reviewpublishing.com; jstokes@reviewpublishing.com;

Gundersen, Glenn

Subject: Re: TASTE OF SOUTH JERSEY Notice attached!


Sent: Tue, 18 Mar 2008 16:38:21 -0400

was read on Tue, 18 Mar 2008 17:21:28 -0400

"EMF <dechert.com>" made the following annotations.

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

=====

Attachments:  Text version of this message. (970B) (238B)

OK

REPLY

REPLY ALL

FORWARD

DELETE

REPORT SPAM

Previous

Next

Read Message

Previous

Next

Move To

Select One

OK

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REPLY ALL

FORWARD

DELETE

REPORT SPAM

FULL HEADERS

EXPORT

PRINT

From: Anthony Clifton <aclifton@reviewpublishing.com>

{ add to contacts }

To: 'FOOD PRESS WIRE' <pr@foodpresswire.com>

Cc:

Date: Tuesday, March 18, 2008 07:32 pm

Subject: Read: TASTE OF SOUTH JERSEY Notice attached!

Your message

To: aclifton@reviewpublishing.com

Cc: gmonte@reviewpublishing.com; jstokes@reviewpublishing.com; glenn.gundersen@dechert.com

Subject: Re: TASTE OF SOUTH JERSEY Notice attached!

Sent: 3/18/2008 4:38 PM

was read on 3/18/2008 7:32 PM.

Attachments:  Text version of this message. (267B)

(235B)

OK

REPLY

REPLY ALL

FORWARD

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REPORT SPAM

Previous

Next

From: "Anthony Clifton" <aclifton@reviewpublishing.com>
To: "'FOOD PRESS WIRE'" <pr@foodpresswire.com>
Subject: Read: USPTO Cancellation No. 92049029
Date: Wednesday, March 19, 2008 10:08 AM

Your message

To: lsteiner@acweekly.com
Cc: jstokes@reviewpublishing.com; aclifton@reviewpublishing.com;
glenn.gundersen@dechert.com; gmonte@reviewpublishing.com
Subject: Fw: USPTO Cancellation No. 92049029
Sent: 3/19/2008 9:16 AM

was read on 3/19/2008 10:07 AM.

EXHIBIT B

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Track & Confirm

Search Results

Label/Receipt Number: 7006 0810 0005 3405 9705
Status: Delivered

Your item was delivered at 11:54 AM on April 28, 2008 in
PHILADELPHIA, PA 19102.

Track & Confirm

Enter Label/Receipt Number.

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Search Results

Label/Receipt Number: 7006 0810 0005 3405 9729
Status: Delivered

Your item was delivered at 11:51 AM on April 28, 2008 in
PHILADELPHIA, PA 19102.

Track & Confirm

Enter Label/Receipt Number.

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Network

Petitioner respectfully pleads with the Board to disregard any previous papers filed that are considered to not be germane to this matter and only recognize this filing of opposition to the motion to dismiss and motion made by the plaintiff that the suspension of this proceeding should not have been initiated by the Board because defendant's motion is mute.

Petitioner respectfully requests the Board to the dispose of the opposing party or attorney for the opposing party's motion to dismiss in favor of the plaintiff's opposition to the defendant's unfounded motion.

Petitioner respectfully requests the Board to sanction the opposing party or attorney for the opposing party for making the unfounded motion to dismiss for insufficiency of service of process.

Respectfully submitted,

/david j. long jr./

David J. Long Jr., T/A: The Taste of South Jersey

2050 Delsea Drive, Sewell, NJ 08080

(856) 232-2299

May 16, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of this paper filing has been duly served by mailing a copy, first class, postage pre-paid to both the law firm Dechert LLP, Circa Centre, 2929 Arch Street, Philadelphia, PA 19104, and the Defendant, Review Publishing Limited Partnership, 1500 Samson Street, 3rd Floor, Philadelphia, PA 19102.

____/david j. long jr./____